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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,138	02/09/2004	Douglas J Kroll	04204	2137
23688	7590	01/07/2005	EXAMINER	
Bruce E. Harang PO BOX 872735 VANCOUVER, WA 98687-2735			GUTMAN, HILARY L	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/708,138

Applicant(s)

KROLL ET AL.

Examiner

Hilary Gutman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Drawings*

1. The drawings were received on 11/19/04. These drawings are acknowledged by the examiner.

### *Claim Objections*

2. Claim 1 is objected to because of the following informalities:

On line 4, "a vehicle floor panel" should be "the vehicle floor panel". On line 7, "a cargo retention locking device" should be "the cargo retention locking device".

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2 and 6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Malinowski.

Malinowski (5,544,998) discloses a cargo retention rail system (Figure 2) made as an integral part of a vehicle floor panel 12 for securing cargo (not shown) in a vehicle cargo area comprising in cooperative combination: at least one cargo retention rail 22 attached to a vehicle floor panel, the cargo retention rail having a channel with an exposed opening for accepting a cargo retention locking device 60; and a cargo retaining device 44 mountable to the cargo

retention locking device; thereby allowing for the cargo to be securely positioned within the vehicle cargo area.

With regard to claim 2, there are a pair of parallel spaced apart retention rails attached to the vehicle floor panel.

With regard to claim 6, the pair of parallel spaced apart retention rails is positioned with their longitudinal axis in line with the longitudinal axis of the vehicle.

With regard to the limitation that the rail system is “molded” as an integral part of the floor panel, it should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

With regard to the term “integral”, this limitation is treated as defined as a unit with another part (Merriam Webster’s Collegiate Dictionary, 10<sup>th</sup> edition) and the rail system of Malinowski is believed to be integral in this sense.

5. Claims 1-2 and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Miyahara et al.

Miyahara et al. (6,435,590) disclose a cargo retention rail system made as an integral part of a vehicle floor panel (Figure 5) for securing cargo (seat) in a vehicle cargo area comprising in cooperative combination: at least one cargo retention rail 8a attached to a vehicle floor panel, the cargo retention rail having a channel with an exposed opening for accepting a cargo retention locking device 29; and a cargo retaining device 30 mountable to the cargo retention locking

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device; thereby allowing for the cargo (such as seats and people sitting thereon) to be securely positioned within the vehicle cargo area.

With regard to claim 2, there are a pair of parallel spaced apart retention rails attached to the vehicle floor panel.

With regard to claim 7, the pair of parallel spaced apart retention rails is positioned with their longitudinal axis perpendicular to the longitudinal axis of the vehicle.

With regard to the limitation that the rail system is “molded” as an integral part of the floor panel, it should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

With regard to the term “integral”, this limitation is treated as defined as a unit with another part (Merriam Webster’s Collegiate Dictionary, 10<sup>th</sup> edition) and the rail system of Miyahara et al. is believed to be integral in this sense.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malinowski in view of Peterson.

Malinowski is silent on the material used for the retention rail.

Peterson (6,435,421) teaches extruded aluminum retention rails.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rails of Malinowski out of extruded aluminum as taught by Peterson in order to provide the rails with strength without adding additional weight to the system.

With regard to the "extruded" limitation of claim 3, it should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malinowski in view of Huetteman et al.

Malinowski is silent on the material used for the retention rail.

Huetteman et al. (5,960,721) teach polymer rails which provide impact resistance and resist damage.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rails of Malinowski out of a polymer as taught by Huetteman et al. in order to provide the rails with impact resistance.

10. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malinowski in view of Vennell.

Malinowski is silent on the material used for the retention rail.

Vennell (6,270,017) teaches polymer rails and epoxy resin blocks.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rails of Malinowski out of a polymer as taught by Vennell in order to provide the rails with impact resistance.

### ***Response to Arguments***

11. Applicant's arguments filed 11/19/04 have been fully considered but they are not persuasive.

With regard to the argument that Malinowski fails to show the rails as an integral part of the floor panel, the examiner notes that the term "integral" is taken to mean formed as a unit with another part. With this definition, it is clear that the rails of Malinowski are indeed formed as a unit with the floor panel. The applicant goes on to state that the reference does not disclose, teach, or suggest a means of securing cargo to the open track system. However, the examiner

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disagrees and notes that the reference discloses the platform or load floor supporting any cargo load. The cargo can be supported by the load floor thanks to gravity and can therefore be secured to the load floor.

The applicant also argues that Miyahara et al. does not suggest how to mold an open channel rail in a floor panel. However, Miyahara et al. do suggest the claimed invention as broadly recited and interpreted. Specifically, the rails are integrally attached to the floor pan or frame in that the components are a unit. Furthermore, the applicant argues the reference does not suggest how to secure cargo at all. However, the examiner disagrees and believes the seat itself constitutes cargo as well as any passengers or items placed thereon.

For claim 3, the applicant argues that Peterson teaches only how to use extruded aluminum rails upon a platform. The examiner agrees that Peterson teaches the use and desirability of extruded aluminum rails on a platform. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

For claim 4 and in response to applicant's argument that there is no suggestion to combine the references Malinowski and Huetteman et al., the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In*



*re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Huetteman et al. teaches the importance of polymer members (rails) and it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided these polymer rails for the rails of Malinowski in order to impart impact and damage resistance to the rails.

For claims 4-5, applicant traverses the rejection using Vennell. In response to applicant's argument for claims 4-5 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., how to mold a metal open channel rail into a floor) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Also with respect to claims 4-5, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

14. **Any response to this final action should be mailed to:**

Box AF

Assistant Commissioner for Patents


Washington, D.C. 20231

**or faxed to:**

(703) 872-9327, (for formal communications; please mark "EXPEDITED PROCEDURE")

**or:**

(703) 746-3515, (for informal or draft communications, please clearly label "PROPOSED" or "DRAFT").

  
Hilary Gutman

1/5/05